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DIRECTOR OFFICE
TECHNOLOGY CENTER 2600
DECISION
ON PETITION

BANNER & WITCOFF
1001 G STREET NW
ELEVENTH FLOOR
WASHINGTON DC 20001-4597

In re Application of: :
Macridis et al. :
Application No. 09/319,460 :
Filed: August 9, 1999 :
For: BANDWIDTH ALLOCATION METHOD AND :
APPARATUS :

This is a decision on the petition filed June 30, 2003 to withdraw the holding of abandonment. No fee is required.

The application is abandoned for failure to timely pay the required issue fee within the three month statutory period from the mailing date of the Notice of Allowance mailed January 28, 2003. A Notice of Abandonment was mailed June 11, 2003.

Petitioner alleges that the Notice of Allowance was not received.

Based on M.P.E.P. § 711.03(c) [*See also Notice entitled Withdrawing the Holding of Abandonment When Office Actions Are Not received, 1156 O.G. 53 (November 16, 1993)*], in absence of any irregularity in the mailing of an Office action, there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include:

(a) a statement from the practitioner stating that the Office communication was not received by the practitioner;

(b) a statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and

(c) a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

A review of the record indicates that the Notice of Allowance was properly mailed to the practitioner of record at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the Notice of Allowance on the part of the Patent and Trademark Office.

Petitioner has meet requirements (a)-(c) above. Therefore, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

Accordingly, the petition is **GRANTED**.

A Notice of Allowability was mailed along with the Notice of Allowance. Since it has been established that the Notice of Allowance was not received, it is presumed that Petitioner also failed to receive the Notice of Allowability. The Notice of Allowance is vacated.

The application file will be forwarded to the Technology Center's technical support staff for issuing a new Notice of Allowance and Issue Fee Due and Notice of Allowability. The period for response will be reset to run from the mailing date thereof.



Allen R. MacDonald, Director
Technology Center 2600
Communications